United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

75-1292

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P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 75-1292

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

PIERRIE L. SOLOMON

DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF

DEFENDANT-APPELLANT

PIERRIE L. SOLOMON

GREGORY B. CRAIG, ESQ.
COUNSEL FOR DEFENDANT-APPELLANT
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NEW HAVEN, CONNECTICUT

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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 109 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

PIERRE LEVEQUE SOLOMON

withdrawn

ATTORNEYS

For U.S.:

Stewart H. Jones, U.S.Atty.
Peter A. Clark, Asst.USAtty
Federal Building
New Haven, Conn.

For Defendant:

Thomas D. Clifford (apptd)
Public Defender
770 Chapel Street
New Haven, Conn.
Gregory B. Craig, apptd
Asst. Federal Public Def.

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk						
J.S. 3 mailed	Marshal						
Violation U.S. Code	Docket fee						
Title 18							
Sec. 2312 & 2313							

DATE	PROCEEDINGS
1974 4/5	The Grand Jury at New Haven returned a True Bill of Indictment charging violation of 18 U.S.C. 2312 and 2313 - 2 counts - transporting in interstate commerce stolen motor vehicle, knowing said vehicle to have been stolen, and concealing stolen motor vehicle, which was moving in interstate commerce, knowing said vehicle to have been stolen. Bench Warrant may issue and lodged as a detainer. Newman, J. m-4/8/74.
4/8	Bench Warrant issued in duplicate and with certified copy of the Indictment handed U.S. Marshal for service.
4/15	PLEA: Plea of not guilty entered to Counts 1 and 2. Case continued on personal recognizance for trial. Standing Discovery Order in effect. Newman, J. m-4/15/74.
4/19	Court Reporter's Notes of proceedings held on April 15, 1974 (Plea), filed. Gale, R.
4/19	U.S. Magistrate's papers, filed: Record of Proceedings, Bench Warrant, Appearance Bond and CJA Form D appointing Thomas D. Clifford, Federal Public Defender, to represent defendant.
5/6	Court Reporter's Sound Recording of proceedings held on April 15, 1974 (Plea), filed. Gale, R.

DATE	PROCEEDINGS
1974	
6/10	On JON's Jury Assignment List. Marked over. Newman, J. m-6/10/
6/11	Continued to July 8, 1974. Newman, J. m-6/11/74.
6/26	Marshal's Return showing service, filed: Subpoena to Produce (3)
7/8	Case continued to September trial list. Newman, J. m-7/9/74.
7/9	Marshal's Return showing service, filed: Subpoena to Produce (1)
7/16	Marshal's Return showing service, filed: Subpoena to Produce (1)
7/22	Marshal's Return showing service, filed: Subpoena to Produce (4)
7/22	Marshal's non est return, filed: Subpoena to Produce (1).
7/26	Marshal's non est return, filed. Subpoena to Produce (1).
8/1	Notice of Readiness for trial, filed by the Government.
9/5	Motion to Stay the Proceeding, to Strike the Jury Panel and for a Supplemental Order Concerning the Selection of Prospective Petit Jurors, filed by defendant.
9/17	Motion to Suppress, filed by defendant.
9/19	Government's Response to Motion to Stay the Proceedings, to Strike the Jury Panel and for a Supplemental Order Concerning the Selection of Prospective Petit Jurors filed.
9/25	On JON's Jury Assignment List. Ready for next calendar as #6. (Motion to Suppress pending). Newman, J. m-9/26/74.
11/7	Memorandum in Opposition to Defendant's Motion to Suppress, filed by the Government.
11/26	On JON's Jury Assignment List, marked over indefinitely. Newman, J m-11/26/74.
"	Court Reporter's Notes of proceedings held on Nov. 26, 1974, filed Cale, R.
11/26	Motion to suppress endorsed, "Motion denied for reason stated in c court." Newman, J. m-11/27/74
11/26	Hearing held on defendant's Motion to Suppress: Memorandum in support of Defendant's Motion to Dismiss, filed. Court Ex. #3500-3502, marked for Ident. Gov't Ex. #1, filed. Govt Ex. #2-20, marked for Ident. Three Gov't. witnesses sworn and testified. One def't witness sworn and testified. "Motion denied for reasons stated in open court."Newman, J. m-11/26/74.
1975	
2/19	Appearance of William F. Dow, III. Assistant U. S. Atty. entered for the Government, Copies distributed.
2/27	On JON's Jury Assignment List, marked ready. Newman, J. m-2/27/75
4/11	Defendant's Submission of Voir Dire Questions, filed by defendant.
4/11	On Jon's Jury Assignment List, marked ready #2. Jury impanelled To commence evidence at conclusion of Criminal Nos. N-74-63 and N-74-81. Newman, J. m-4.14/75.
4/11	JURY TRIAL COMMENCES: Same jurors present as in N-74-63 and N-74-81. Counsel agree on selecting a panel of 12 jurors and 2 alternates. 12 jurors and 2 alternates impanelled and sworn. The evidence in this case to commence at the end of Rriminal No. N-74-63 and N-74-81. Jurors excused subject to call. Newman, J. m-4/14/75.
4/14	Court Reporter's Notes of Proceedings (Trial) held on April 11, 1975, filed. Cale, R.
4/14	Marshal's return showing service, filed: Subpoena to testify (7)
4/14	Marshal's return showing service, filed: Subpoena to produce document or Object (2)
4/17	JURY TRIAL CONTINUES: Gov't. Memorandum on the Admissibility of

DATE 1975	PROCEEDINGS
4/17	of Evidence Relating to prior crimes, filed. Deft's. Memorandum on the Admissibility of Evidence Relating to Prior Crimes, filed. 3:43 P.M. Jury enter Courtroom. Three Govt. witnesses, sworn and testified. Govt. Ex. #1, marked for ID, Govt. Ex. #1, made full exhibit. Govt. Ex. #2, marked for Id. Deft. Ex. A, marked for ID, Deft. Ex. A. made full exhibit. 5:04 P.M. Jury is excused until 10:00 A.M. 4/18/75. In absence of jury Court hears deft's claims re: questioning of Govt. witness, Govt states claims in opposition. Govt. Advises Court it will call witness out of sequence on 4/18/75. Court adjourned 5:55 P.M. Newman, J. m-4/17/75.
4/18	JURY TRIAL CONTINUES: 10:22 Jury Trial Continues, Deft. not present. 10:24 A.M. Court in recess until Deft. arrives. 11;18 A.M. In absence of the Jury Court advises the deft. that he should be in Court on time or actions will be taken to be certain that he is here on time and that there is also possibility of the case being heard without him being present. Govt's. Proposes Instructions on Evidence of Similar Acts, fil Court and counsel discuss the admissibility of evidence of prior acts. Court rules that 4 of 5 of the previous episodes may be brought into evidence. Counsel agree to have it brought into evidence through testimony rather than stipulate to the episodes. Court instructs deft. as to the ruling. 11:52 A.M. Jury panel of 14 enter Courtroom, Govt. witness Synnett, returns to stand for continued cross. examination. Two Govt. witness sworn and testified. Govt Exs. 3-6 marked for ID. Govt. Exs. made full Exs. Deft. Exs. B,C,D&E, marked for ID. Deft. Exhibits Bthru E made full Exs. Govt. Ex. 7, marked, Govt. Ex. 7 made full exhibit. Stipulation, filed: Re: testimony of MVD in Miss. Three Govt. witnesse sworn and testified. Govt. Exs. 8 thru 13, marked for ID. Govt. Ex. 8 thru 13 made full exhibits. two stipulations filed, re: 1) testimony of Burr, and 2) testimony of MVD, N.J., two stipulations filed, re: 1) testimony of Roche and 2) testimony of Geraghty. 3:08 P.M. Govt. rests. 3:08 Jury excused. In absence of jury Court and counsel discuss stipulation re;Geraghty. Counsel agree to have it re-typed. Deft. moves for Judgment of Acquittal. denied for reasons stated in open Court. 3:50 Jury re-enters Courtroom. Govt. Exs. 14-16 filed. Counsel agree on read into record stipulation re: State of N.Y. Stipulat filed. Three Deft. witnesses sworn and testified. 4:48 Court adjourned until Mon. April 21, 1975 at 10:00 A.M.. Newman, J. 4/21/75.
4/21	JURY TRIAL CONTINUES: 11:22 A.M. 12 jurors and 2 alternates present. Six Deft. witnesses sworn and testified. Deft. Exhibits F & G, filed. Deft. Exhibit H, marked for ID. Deft. Ex. H, made full exhibit. Deft. Exhibits I, J, & K, filed. Deft. Ex. L, marked for ID, Deft. Ex. L made full exhibit. Deft. Exhibits M, N, O, & P, filed. Deft. Rests, at 2:42 P.M.. Jury excused. Deft's Request to Charge, filed. In the absence of the jury Court and counsel discuss the charge to jury. Deft. moves for Judgment of Acquittal, denied for reasons stated in open Court. 3:19 Jury re-enters Courtroom, 3:21 P.M. - 3:34 P.M. Govt. opens 3:35 P.M. - 3:58 P.M. Deft. Counsel, 3:58 P.M. - 4:04 P.M. Govt. closes. Two alternates excused. 4:09 P.M. - 4:40 P.M. Court charges jury. Govt. and Deft. take exception to charge. No further charge to be given. 4:40 P.M. Jury retires to Jury room. 4:43 By agreement of counsel all full exhibits and Indictment are deliverd to jury room by U.S. Marshal and deliberations begin. 5:09 P.M. Note from Jury. 5:10 P.M. Jury re-enters Courtroom, Court Ex. # 1, marked for ID. 5:13 P.M. Jury excused until 10:00 A.M. on April 22,1975. 5:13 Court adjourned. Newman, J. m-4/22/75

DATE 1975	PROCEEDINGS
4/22	Court Reporter's Notes of Proceedings (trial) held on April 17, 1975, filed, Gale, R.
" "	Court Reporter's Notes of Proceedings (trial) held on April 18, 1975, filed, Gale, R.
" "	Court Reporter's Notes of Proceedings (trial) held on April 21 and 22, 1975, filed. Gale, R.
4/22	Marshal's return showing service, filed. Subpoena to Produce Document or Object (2)
4/22	Marshal's return showing service, filed. Subpoena to Testify (7)
4/22	Marshal's non est return, filed. Subpoena to testify (3).
4/22	JURY TRIAL CONTINUES: 12 jurors report to the Jury room. All full exhibits and the Indictment are delivered to jurors in jury room by Clerk of Court and deliberations resume. 12:16 P.M. Jury returns to Courtroom with the following verdict: Deft., Solomon, guilty on each of Cts. 1 and 2 of the Indictment. Jury is polled at request of deft. and all answer in the affirmative. 12:21 Jury excused subject to call. Govt. request a Modification in the terms of deft's release. Request that deft. be required to report to his Federal Probation Officer in Brooklyn, N.Y. one day a week until he is sentenced by the Court. Granted. Court also advises deft. that a failure to fulfill these conditions will be a violation of his bond and he will become subject to bail jumping penalties. 12:24 Court adjourned. Newman, J. m-4/22/75
4/23	Application for Leave to Substitue Copies of Exhibits for Originals, filed by Govt., and So Ordered Newman, J. m-4/24/75. copies mailed to counsel
4/25	Government exhibits 10, 11, 12 & 13 turned over to Asst. U.S. and substitute copies tendered to Clerk of Court. Receipt acknowledged
5/1	Marshal's return showing service, filed. Subpoena ticket
5/1	Marshal's non est return, filed. subpoena ticket.
4/22	Marshal's return showing service, filed.: Subpoena to produce.
6/11	Order, filed and entered, The defendant is hereby permitted to substitute photographic copies of the original documents entered into evidence as exhibits for the defense during the trial in the above captioned case. Newman, J, m 6/12/75. Copies sent to counsel : Govt. Ex. #2, and Deft. Exs. F & J, were substituted by Xeroxed copies on 6/18/75.
7/15	DISPOSTION: Over to August 25, 1975 at 10:00 A.M. in Hartford. Newman, J. m-7/15/76
7/21	DISPOSITION: Defendant is committed to custody of Atty. General or his authorized representative for impr. for a period of four years on each of Counts 1 & 2; execution of sentence of impr. is suspended after six months and the defendant is placed on probation for aperiod of five years. Sentences run concurrently. Notice of Appeal, filed. Approved by Court for "In Forma Pauperis" Same bond to continue pending appeal. A Condition of deft's bond includes normal conditions of probatio re: not violating criminal statutes; also deft. must advise Offcie of the Public Def. of any change in his address, otherwise deft. will be declared a fugitive. Newman, J. m-7/23/75.
/23	Certified copies of docket sheets and Notice of Appeal sent to Clerk, U.S.C.A.. Copies of Notice of Appeal mailed to Attys. Dow and Craig.
/22	Court Reporter's Notes of Proceedings (Disp) held on July 21, 1975, filed. Gale, R.
7/25	Judgment and Commitment, filed and entered. Newman, J. m-7/25/75.

DATE	PROCEEDINGS
1975	
8/8	Copy of Order from U.S. Court of Appeals ordering that 7 copies of the appellant's brief and appendix be filed on or before September 17, 1975, if such brief or appendix shall not be filed by the date set the appeal shall be dismissed forth with, that the United States file its brief on or before Oct. 171975, and that agrument of the appeal be heard during the week of October 27, 1975. Fusaro, C. m-8/8/75

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. N-74-37

PIERRIE LEVEQUE SOLOMON :

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

On or about March 21, 1974, PIERRIE LEVEQUE SOLOMON, the defendant herein, did transport in interstate commerce a stolen motor vehicle, that is, a 1973 GMC Astro "95" tractor, green in color, Vehicle Identification Number TDH92AV594383, property of National Car Rental System, Inc., Newark, New Jersey, which was stolen in Newark, New Jersey, from Massachusetts to Milford, Connecticut, and he then and there knew the said motor vehicle to have been stolen, in violation of Title 18, United States Code, Section 2312.

COUNT TWO

On or about March 21, 1974, PIERRIE LEVEQUE SOLOMON, the defendant herein, at Milford, Connecticut did conceal a stolen motor vehicle, that is, a 1973 GMC Astro "95" tractor, green in color, Vehicle Identification Number TDH92AV594383, property of National Car Rental System, Inc., Newark, New Jersey, which was stolen in Newark, New Jersey, which was moving as interstate commerce from Massachusetts to Connecticut, and he then and there knew the said motor vehicle to have been stolen, in violation of Title 18, United States Code, Section 2313.

A TRUE BILL

FOREMAN

STEWART H. JONES
UNITED STATES ATTORNEY

PETER A. CLARK

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. N-74-37

PIERRIE LEVEQUE SOLOMON :

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

The Defendant is charged in a two-count indictment with transportation of a stolen motor vehicle in interstate commerce (18 USC §2312) and concealing a stolen motor vehicle which was moving as a part of interstate commerce (18 USC §2313). He has filed a Motion to Suppress Evidence with this Court.

THE FACTS

The Defendant, PIERRIE LEVEQUE SOLOMON, was arrested by Officer Robert Hall of the Milford Police Department on March 21, 1974 at the Mayflower Truck Stop in Milford.

At about 5:00 P.M. on March 21, Joseph Synnett, Operational Manager for National Car Rental in Bridgeport, was at the Mayflower Truck Stop and spotted a tractor-trailer rig parked in the service area and from the National registration number recognized the tractor as one stolen from National's Newark office on March 13. He then called the Milford Police to inform them of his discovery. Mr. Synnett then obtained the keys and registration from Solomon's helper and learned from Solomon that he was driving the truck from Massachusetts to the District of Columbia. Synnett noted that the tendered registration did not match the VIN number of the recovered tractor.

When Officer Hall arrived he obtained from Synnett the keys and registration and telephonically confirmed Synnett's representation that the tractor was stolen. Solomon and his helper were then placed under arrest and the rig was turned over to Mr. Synnett who removed it from the truck stop to National's office in Bridgeport.

After being advised of his rights, Solomon informed Officer Hall that he did not steal the truck nor know it was stolen and stated that he received the truck from his employer in New Jersey. Solomon gave substantially the same information to a Milford detective that same evening. Later, on March 22, after being advised of his rights by agents of the Federal Bureau of Investigation, Solomon essentially repeated the same information.

On March 22, Special Agent Steven Scheiner of the FBI examined the vehicle at National's Bridgeport office in the presence of Synnett and Sergeant Ambrosio of the Milford Police Department. Inside the cab, Special Agent Scheiner observed a brown attache case with no external markings to indicate ownership. Agent Scheiner opened the attache case to find the identity of its owner and found numerous papers, including two New York City traffic tickets. Each of these tickets was issued shortly after the theft of the tractor; one indicates the license plates on the tractor when stolen and the other indicates the plates found on the vehicle when recovered from Solomon. The Government intends to introduce these and possibly other documents from the attache case at trial.*/

*/It should be noted that Solomon admitted to the FBI that he received these tickets while the truck was in his possession.

THE STATEMENTS

The Government submits that testimony to be offered at the hearing of this motion will show that Solomon knowingly and intelligently waived his Fifth and Sixth Amendment rights and voluntarily gave statements to the Police and the Federal Bureau of Investigation.

THE SEARCH

The search of the vehicle by Special Agent Scheiner on March 22, was conducted in the presence of the owner (or, more accurately, the owner's agent) and with his consent after the vehicle had been returned to him by the police subsequent to Solomon's arrest. The examination of the brief case in the cab of the truck was for the purpose of determining its ownership and certainly meets with the reasonableness standards of the Fourth Amendment. United States v. Beasley, 476 F.2d 164 (9th Cir. 1973); United States v. Fuller, 433 F.2d 533 (D.C. Cir. 1970).

Furthermore, there is ample case law to support the warrantless search of a vehicle in these circumstances. In Cooper v. California, 386 U.S. 58 (1967), the Supreme Court upheld a search of a vehicle one week after it was taken into police custody pursuant to state law and incident to the arrest of its owner for sale of narcotics. The Court noted:

> It is no answer to say that the police could have obtained a search warrant, for the "relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable". United States v. Rabinowitz, 339 U.S. 56, 66
>
> 386 U.S. at 62

In a later case, Harris v. United States, 390 U.S. 234 (1968), the Court upheld the impoundment of a vehicle without a warrant and the plain view discovery of evidence during the subsequent inventory. Also, in Chambers v. Maroney, 399 U.S. 42 (1970), the Court again upheld the warrantless search of a vehicle that had been seized from the defendant at the time of his arrest and subsequently searched.

United States v. Beasley, supra, presents a factual background almost identical to the case at bar. Beasley was stopped for a traffic violation and when police officers ascertained that the registration tendered by him contained a VIN number different from that of the car he was driving, they made a radio check which indicated the car was registered to Avis-Rent-A-Car. Beasley was requested to accompany the officers to the station house, where one of the officers searched the vehicle for a "packing slip" and any Avis identification numbers. During the course of the search, the officer came upon a wallet beneath the seat, opened it and found that it belonged to someone other than the defendant. The Court of Appeals found the actions of the police officers reasonable and not violative of defendant's Fourth Amendment rights.

Lastly, in Cady v. Dombrowski, ___U.S.___ Cr.L. 3231 (June 20, 1973), the Supreme Court upheld the warrantless search of an automobile which had been removed from the highway and placed in a garage because it had been disabled. In deciding the issue, the Court squarely addressed itself to the question of warrantless searches of automobiles fully recognizing that "this branch of the law is something less than a seamless webb". 13 Cr.L. 3231, 3233. The Court acknowledged traditional distinction drawn between automobiles and houses but noted that "warrantless searches of vehicles by state officers have been sustained in cases in which the possibilities of the vehicle being removed or evidence in it destroyed were remote, if not non-existent." 13 Cr.L. 3233. The ultimate question must be whether the search was "unreasonable":

> The Court's previous recognition of the distinction between motor vehicles and dwelling places leads us to conclude that the type of caretaking "search" conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained. The Framers of the Fourth Amendment have given us only the general standard of "unreasonableness" as a guide in determining whether searches and seizures meet the standard of that Amendment in those cases where a warrant is not required. Very little that has been said in our previous decisions . . . and very little that we might say here can usefully refine the language of the Amendment itself in order to evolve some detailed formula for judging cases such as this.
>
> 13 Cr.L. 3234

The answer to this question must be in the affirmative. The actions of the agents were entirely reasonable and proper and not violative of defendant's rights under the Fourth Amendment.

PETER C. DORSEY
UNITED STATES ATTORNEY

WILLIAM F. DOW, III
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. N-74-37
	:	
PIERRE LEVEQUE SOLOMON	:	
	:	
Defendant	:	

MEMORANDUM IN SUPPORT OF DEFENDANT SOLOMON'S MOTION TO SUPPRESS

Introduction

The defendant, Pierre LeVeque Solomon (hereinafter "Solomon"), has framed his Motion to Suppress in extremely general language. This Memorandum, however, is addressed solely to the fruits of the Government's warrantless, post-arrest search of the allegedly stolen tractor-trailer truck. By dealing exclusively here with the evidence seized by the Government on March 22, 1974 in what appears to be a clear-cut fishing expedition by the FBI, the defendant does not waive his Fourth Amendment claims with respect to any other evidence taken by the Government at that time or subsequently.

The March 22 search of the Solomon truck is constitutionally invalid because it has none of those saving traits which the Supreme Court has recognized in the past as transforming a warrantless search into a reasonable one within the meaning of theFourth Amendment.

-- There were no "exigent circumstances" present;

-- The search was not incident to arrest;

-- The search was not an inventory nor an administrative search;

-- The Government had no possessory interest in the vehicle;

-- The defendant did not waive his Fourth Amendment rights, and National Rent-a-Car could not waive those rights for him.

STATEMENT OF FACTS

The facts upon which the defendant bases this motion are as follows:

(1) The defendant was arrested on March 21, 1974 by the Milford Police Department on a charge of possessing stolen property.

(2) The property involved was a tractor-trailer rig allegedly stolen from the National Rent-a-Car office (hereinafter "National") in Newark, New Jersey on March 13, 1974.

(3) At the time of the arrest, defendant Solomon was in possession of the truck.

(4) The basis for the arrest was that Mr. Joseph Synnett, the Operational Manager for National's office in Bridgeport spotted the truck parked in the service area of the Mayflower Truck Stop in Milford, recognized the registration number of the tractor as one belonging to a recently stolen truck, and called the police.

(5) After the arrest, the truck was turned over to Mr. Synnett who drove the rig from the truck stop in Milford to the parking lot outside the National office in Bridgeport.

(6) A steel wire fence with a gate that locks surrounds the National parking lot in Bridgeport where the truck was taken.

(7) On the day following the arrest, March 22, 1974, Special Agent Steven Scheiner of the FBI accompanied Sergeant Ambrosio of the Milford Police Department to National's office in Bridgeport where Special Agent Scheiner conducted a search of the truck's interior. At the time of the search, the defendant was incarcerated.

(8) The search of the Solomon truck on March 22, 1974 was conducted without a warrant.

(9) The Government intends to introduce the fruits of the March 22 search at trial.

(10) The defendant was indicted on April 8, 1974 and charged with violating 18 U.S.C. Sections 2312 and 2313.

There is no denying that Fourth Amendment protections afforded motor vehicles have been sharply curtailed in the last five years. The Supreme Court, however, has not gone so far as to say that all searches of motor vehicles simply because they are motor vehicles are reasonable. When the Government conducts a search without a warrant, there must be some showing that the search was reasonable for other reasons. Otherwise the Fourth Amendment's yet vital protection of the "right of the people to be secure ... against unreasonable searches and seizures." must prevail.

The Government has offered no such other reasons to justify the March 22 search of the Solomon truck. There are none.

Since the Government in its Memorandum refers willy-nilly to a variety of different kinds of cases involving different kinds of warrantless searches of motor vehicles, it is difficult for the defendant to know with any certainty what theory the Government is proposing as a justification for this search. In addition to the mandatory and predictable claim that the March 22 search was "reasonable," the Government offers up a string of decisions, each of which justifies the warrantless search of an automobile in one fact situation or another, but none of which compares with the facts surrounding the subject matter of this motion.

1. There were no "exigent circumstances."

The Supreme Court has long recognized that for Fourth Amendment purposes, motor vehicles are different from residences in that automobiles can be easily moved. In Carroll v. United States, 267 U.S. 132 (1925), the Court upheld the warrantless pre-arrest search of a vehicle on the open roadside because, given the mobility of the automobile, it was impracticable for the law enforcement officers to secure a warrant. But the Carroll court also held that "[in] cases where the securing of a warrant is reasonably practicable, it must be used." 267 U.S. at 156.

Subsequent cases have implied that potential mobility is

sufficient to justify a warrantless search. See Husty v. United States, 282 U.S. 694 (1931); Scher v. United States, 305 U.S. 251 (1938). But the doctrine of potential mobility was modified in Coolidge v. New Hampshire, 403 U.S. 443 (1971) in which the Court concluded that there had to be some real possibility of the car being moved for the Carroll reasoning to apply.

In Coolidge, the police seized the defendant's unoccupied car from his driveway, took it to the station, and conducted a search under an invalid warrant. The Court declared that since there had been no immediate danger that the car would be moved, a valid warrant was necessary and the search was unconstitutional.

In this case as in Coolidge, there was no danger, no real possibility that the tractor-trailer would be moved: the defendant had been arrested and was still in jail; the truck was in the custody of its owner, parked on a private lot (not on the street) surrounded by a steel wire fence presumably erected for the sole purpose of deterring theft. There was no danger that the truck would be moved or that its contents would be disturbed.

The Government has directed our attention to Chambers v. Maroney, 399 U.S. 42 (1970) and United States v. Beasley, 476 F.2d 164 (9th Cir. 1973). Neither one of these cases, however, provides any comfort or support to the Government's position. In each, the Court found exigent circumstances justifying the search; no such similar exigent circumstances exist here.

In Chambers, the police stopped a stationwagon with four men fitting the description of individuals who had just committed a late-night armed robbery of a gas station. The four were arrested and taken, along with their car to the police station. The car remained on the street, potentially mobile. The Court upheld the warrantless, post-arrest search that ensued, basing its opinion specifically on the potential mobility of that automobile. Mr. Justice White wrote for the Court:

> ... the blue stationwagon could have been searched on the spot when it was stopped when there was probable cause to search and it was a fleeting target for a search. The probable cause factor still obtained at the station house and so did the mobility of the car ... (Emphasis added)
> 399 U.S. at 52

Chambers expanded on Carroll in one way only: the Chambers search took place after the arrest of the defendants, not before. Chambers tells us that if probable cause to search existed when the vehicle was originally stopped, it continues to exist after the suspects have been arrested, but that a warrantless search is valid only if the mobility of the car also continues.

With respect to the March 22 search of the Solomon truck, that critical second factor present in both Carroll and Chambers -- mobility or potential mobility -- is absent. Unlike the cars in Carroll and Chambers, the status of the Solomon truck changed significantly. Between the time of Solomon's arrest and the warrantless search, the tractor-trailer was totally and effectively immobilized.

The Government also relies heavily on Beasley, but like Carroll and Chambers before it, Beasley specifically requires the combination of probable cause and vehicle mobility to validate the warrantless search of an automobile. In Beasley, the Ninth Circuit explicitly found that mobility was still a factor since the defendants had not yet been arrested and the car had not been impounded. "In fact," said the Court, "mobility existed to a greater degree than in Chambers where the defendants were under arrest." 476 F.2d at 166.

2. The search was not incident to arrest.

It would appear from the cases cited in the Government's Memorandum that the Government makes no claim that the March 22 search was incidental to Solomon's arrest. The Government is correct in withholding that claim.

In Preston v. United States, 376 U.S. 364 (1964), the court addressed the prosecution's claim that seizure, even though delayed, was incident to the defendant's arrest.

> The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of crime -- things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under an arrest and in custody, then a search made at another place without a warrant is simply not incident to the arrest. (Emphasis added) 376 U.S. at 367.

Defendant Solomon was arrested on March 21 in Milford; the truck was searched on March 22 in Bridgeport.

3. The search was not an inventory search.

By citing Cady v. Dombrowski, 413 U.S. 433 (1973), the Government implies that the March 22 search was a routine inventory search and therefore no warrant was needed. In inventory or administrative search cases, the police justify their intrusion on the basis of a benign intent; they have engaged in a "search" not to uncover and procure criminal evidence, but to protect the health and safety of the public, Cady v. Dombrowski, supra or to protect the police from danger or from liability for theft. Cabbler v. Commonwealth, 212 Va. 521, 184 S.E. 781 (1971).

In Dombrowski, the police arrested an off-duty policeman for drunken driving after a late-night accident. The police conducted a search of the car to obtain the revolver which the arresting officers had reason to suppose Dombrowski carried. The purpose of the search was to remove the gun from access by the public -- presumably youths who might break into the car as it sat in a parking lot. In the process, the police uncovered blood-stained objects which led to Dombrowski's later conviction for murder. The Dombrowski Court made the need for a warrant turn on the intent of the police in conducting the search. Where the purpose is

clearly benign, no warrant should be required.

It is very difficult to see how the Government can transform Special Agent Scheiner's rummage through the Solomon truck into an inventory search. The truck was not in the custody of either the Milford Police Department or the United States, and there was no danger to either government from liability for theft. The truck was surrounded by a steel wire fence, and there was no reason to suspect that the truck or anything in the truck might endanger the public's health or safety. There was no inventory list provided the defendant after the search had been completed. There was in fact no "benign" reason for Special Agent Scheiner's presence and participation in the search. (The FBI, one would think, would have better things to do that to assist the Milford Police Department in a routine catalogue of the contents of a stolen vehicle.) In sum, Scheiner and Ambrosio went to Bridgeport with one purpose in mind -- to search the truck and seize incriminating evidence. They should have obtained a warrant.

4. The Government had no possessory interest.

The Government also invokes Cooper v. California, 386 U.S. 58 (1967) in which the Supreme Court upheld a warrantless automobile search in circumstances that were not exigent and where the police did not have probable cause. That case turned on the fact, however, that the automobile forfeiture provisions in the California Health and Safety Code bestowed a possessory interest on the part of the police sufficient to permit a warrantless search.

> It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it. (Emphasis added) 386 U.S. at 62.

Even the broadest reading of Cooper does not allow warrantless searches where the police do not have a right to deny possession to the car's owner. Neither the Milford Police Department nor the Federal Bureau of Investation can claim such an interest with respect to the National rental truck. Indeed, neither agency did so and neither agency retained the truck in custody for any length of time, returning it to National Rent-a-Car immediately after the arrest of Solomon. The Cooper case is simply inapplicable.

5. The defendant did not waive his Fourth Amendment rights, and National could not waive those rights for him.

The Government implies that Mr. Synnett's permission to search the Solomon truck was a valid waiver of all legitimate Fourth Amendment claims, thus precluding the need for a search warrant. This argument ignores the fact that Mr. Synnett had absolutely no expectation of privacy whatsoever associated with that truck, and any waiver he might give is meaningless. It should not be forgotten that, although ownership of this vehicle appears to have been with National, the truck was in the possession of the defendant at the time of the arrest. It is the defendant's Fourth Amendment interests -- not Synnett's or National's -- that are at stake here, and Solomon never waived them.

Nor were Synnett or National in a position to waive Solomon's rights for him. Neither party was authorized by Solomonto do so and neither party had a concurrent expectation of privacy similar to the analogue of the co-tenant which would permit such a waiver of Solomon's rights. And the Government cannot cite a case to support such a waiver theory.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 75-1292

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

PIERRIE L. SOLOMON

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant in the above matter was mailed postage pre-paid to William F. Dow, III, Esq., Assistant United States Attorney, New Haven, Connecticut.

Gregory B. Craig

Gregory B. Craig
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CONCLUSION

Although Fourth Amendment safeguards have been constricted with respect to motor vehicles, the Government does not yet have carte blanche freedom to search automobiles wherever and whenever it will. To the extent that any Fourth Amendment protections still extend to motor vehicles, they are present in this case. For American citizens to maintain any expectations of privacy in the future with respect to motor vehicles, this search must be declared unconstitutional.

For all the reasons set forth above, the defendant respectfully urges that the motion be granted.

THE DEFENDANT
PIERRE LEVEQUE SOLOMON

BY Gregory B. Craig
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Assistant Federal Public Defender